

**RESOLUTION NO. 2013-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
APPROVING A SEWER SERVICE CHARGE ADJUSTMENT POLICY**

**WHEREAS**, pursuant to Chapter 10.12 of the Los Altos Municipal Code, the City of Los Altos imposes a Sewer Service Charge upon parcels connected to the sewer system; and

**WHEREAS**, the Municipal Code provides that Sewer Service Charges be based upon estimated sewer use, and sets forth a methodology for estimating each parcel's sewer use; and

**WHEREAS**, Section 10.12.210 of the Municipal Code provides an avenue by which a property owner may appeal the sewer use estimation for his or her parcel; and

**WHEREAS**, the City Council desires to adopt a policy to govern the procedures for the processing a determination of such appeals; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby adopts the "Sewer Service Charge Adjustment Policy" attached hereto as Exhibit "A" and incorporated herein by reference.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the \_\_\_\_day of\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Jarrett Fishpaw, MAYOR

Attest:

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Jon Maginot, CMC, CITY CLERK

## Exhibit "A"

### CITY OF LOS ALTOS SEWER SERVICE CHARGE ADJUSTMENT POLICY

#### I. Purpose.

The purpose of this policy is to govern the acceptance and processing of sewer service charge adjustment requests ("appeals") submitted pursuant to Section 10.12.210 of the Municipal Code.

By making an appeal, the appellant is claiming that the City's standard methodology for estimating sewer use yielded an inaccurate estimation for the appellant's parcel. The City's standard methodology estimates a parcel's sewer use for a fiscal year based upon that parcel's actual water use during the three "wet season months"<sup>1</sup> of the prior calendar year. For example, the sewer service charge for FY 2013/14 is based upon actual metered water use during the "wet season months" of calendar year 2012 (February, April, and December). The sewer service charge for FY 2014/15 will be based on actual metered water use during the "wet season months" of calendar year 2013.

The purpose of an appeal is to show that the City's estimation technique is inaccurate for a parcel for either of the following reasons: (i) because the parcel's water use during the baseline "wet season months" was atypical of water use on the parcel or (ii) because an unusual portion of water use on the parcel does not enter the City's sewer system.

#### II. Manner of Submission.

Any appeal must be submitted on the City's "Sewer Service Charge Adjustment Request Form," which shall be in a format approved by the City Manager. Forms will be made available at the City Offices and online on the City's website. Completed forms must be submitted to the City (or the Appeals Administrator designated by the City Manager) in person, by fax, by e-mail or by mail to in order to be considered. Only forms that have been fully completed will be considered. Partially completed forms will be returned unprocessed.

#### III. Time of Submission.

Any appeal with respect to the sewer service charge for a fiscal year must be received no later than December 31 of that fiscal year.

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<sup>1</sup> "Wet season months" are, with respect to a specific calendar year, the three monthly billing periods for which the records of the California Water Service Company indicate the lowest total water consumption during that fiscal year by parcels connected to the City's sewer system that are served by the California Water Service Company.

#### IV. Review.

All appeals will be reviewed and conducted by the Appeals Administrator, as designated by the City Manager. All appeals shall be conducted by review of the written request submitted by the sewer customer on (and along with) the Adjustment Request form, unless the customer requests to also provide oral testimony to the Appeals Administrator. The Appeals Administrator may also request additional information from the appellant if the Appeals Administrator believes that such information would be helpful to the resolution of the appeal.

#### V. Standards for Review.

Appeals shall be granted only if the Appeals Administrator determines that both of the following conditions exist on the parcel:

A. There is *unique or unusual water use* on the parcel.

*And*

B. There is *manifest unfairness*.

A *unique or unusual water use* exists on a parcel when some condition of the parcel or activity conducted upon the parcel causes an unusual amount of the water delivered to the parcel to evaporate, enter the storm drain system, be absorbed into the ground, or otherwise to not enter the sewer system. Not all conditions or activities that divert water from the sewer system qualify as “unique or unusual” water uses. The City's standardized sewer use estimation technique recognizes that no sewer customer introduces all of the water received from their water purveyor into the sewer system. Therefore, an exception to the standardized method can only be granted when the condition or activity is substantially different in nature or quantity from that typical of parcels in the City that have a similar land use.

Two of the conditions for activities that may qualify as unique or unusual water use are water line leaks and maintenance of unusual landscaping.

To demonstrate that a water line leak occurred and was sufficiently substantial to be "unique or unusual," the sewer customer needs to provide evidence (such as a repair bill or receipts for purchase of plumbing hardware) that a leak was repaired and evidence (such as water bills for the three months subsequent to repair of the leak) demonstrating that the leak caused at least a 30% increase in water consumption.

To demonstrate that landscape maintenance on the parcel was “unique or unusual,” the sewer customer needs to provide evidence that one of the following conditions exists on the parcel: (i) there is at least 80% more landscaped area on the parcel than on a typical parcel of

the same land use type; or (ii) a substantial number of plants on the parcel are of a variety that require substantially more winter watering than typical plants used in the City.

Conditions other than water line leaks and unusual landscape maintenance may qualify as unique or unusual water use if the sewer customer can demonstrate that the use or activity both was not typical of similar properties and caused the City sewer use estimation formula to substantially overestimate the customer's sewer use.

*Manifest unfairness* can be demonstrated by showing that: (i) the customer's sewer service charge for the fiscal year is at least 150% of the average sewer service charge for that fiscal year for a parcel in the customer's land use class; and/or (ii) the customer's sewer service charge for the fiscal year is at least 150% of the charge (calculated using the City's current standard method of sewer use estimation) for the customer's parcel for the prior fiscal year.

#### VI. Redetermination of Sewer Use Estimate

If the Appeals Administrator determines that an appeal should be granted, he or she shall then estimate the sewer use for the sewer customer. The Appeals Administrator should follow the following guidelines when making this estimate:

- (i) Where the unique or unusual condition or activity was not present on the parcel during the wet season of the calendar year two years prior to the calendar year in which the fiscal year begins, estimated sewer use should be based on the parcel's actual water use for the wet season months of the earlier calendar year (multiplied by the average estimated sewer use for the customer's land use class for the current fiscal year divided by the average estimated sewer use for the customer's land use class for the prior fiscal year).
- (ii) Where the unique or unusual condition or activity is unusual or extensive landscaping, and if it is possible for the Appeals Administrator to estimate the amount by which water used for landscaping purposes on the parcel during the relevant wet season months exceeded 180% of the amount of water used for landscaping purposes on the typical parcel of the same land use class, then estimated sewer use calculated pursuant to the standard method should be reduced by the amount of such excess landscaping consumption. However, any estimate of sewer use calculated pursuant to this paragraph shall be no less than 150% of the average estimated sewer charge for a parcel in the customer's land use class for that fiscal year.
- (iii) Where neither (i) nor (ii) apply, estimated sewer use shall be 150% of the average estimated sewer use for the customer's land use class.

#### VII. Implementation of Adjustment.

Where the estimated sewer use of a parcel has been redetermined for a fiscal year, that parcel's Sewer Service Charge shall be recalculated based on the new estimate. The City will directly refund to the sewer customer the difference between the original and the recalculated Charge.

VIII. Finality.

The determination of the Appeals Administrator shall be final and non-appealable.

IX. Correction of Data Errors.

The procedure set forth above applies where a sewer customer believes that the City's standard methodology of estimating sewer use does not yield an accurate estimation of the sewer use on his or her parcel. If a sewer customer believes that the Sewer Service Charge for his or her parcel has been improperly calculated because (i) a mathematical error occurred, (ii) the City based the Charge on incorrect water use data (ex used the metered water data for the wrong parcel) or (iii) the City based the Charge on incorrect land use data, the customer should bring this to the City's attention by contacting the City's Engineering Division. Authorized staff may correct such an error when they become aware of the error, or (if it is not clear to staff whether an error has occurred) may refer the matter to the Appeals Administrator for a determination. If the customer chooses to submit a written request under this Section, it should be signed and include a complete description of the claimed data error.